



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0038]

RIN 1625-AA00

Safety Zones; Coast Guard Sector Upper Mississippi River Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its safety zone regulations for annual events in Coast Guard Sector Upper Mississippi River. This proposed rule would add one new recurring safety zone, remove four safety zones, and amend the sponsor/name, date, and/or safety zones for three recurring safety zones already listed in the current table. This action is necessary to protect spectators, participants, and vessels from the hazards associated with annual marine events. This proposed rulemaking would restrict vessel traffic from the safety zones during the events unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0038

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Commander Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone (314) 269-2568, email Sean.M.Peterson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Sector Upper Mississippi River (COTP) proposes to amend 33 CFR 165.801 to update the table of annual fireworks displays and other marine-related events in Coast Guard Sector Upper Mississippi River. The current list of annual and recurring safety zones in Sector Upper Mississippi River is published in Table 2 of 33 CFR 165.801. That most recent table was created through the final rule published on June 21, 2017 (82 FR 28235). The current table in 33 CFR 165.801 needs to be amended to include new safety zones expected to recur annually or biannually, remove safety zones no longer recurring, and provide new information on existing safety zones.

The proposed annually recurring safety zones are necessary to provide for the safety of life on navigable waters during the events. Based on the nature of these marine events, large

numbers of participants and spectators, and event locations, the COTP has determined that the events listed in this proposed rule could pose a risk to participants or waterways users if the normal vessel traffic were to interfere with the events. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the safety zone. In order to protect the safety of all waterway users, including event participants and spectators, this proposed rule would establish safety zones for the time and location of each marine event.

This purpose of this proposed rulemaking is to ensure the safety of vessels on the navigable waters in the safety zones during the scheduled events. Vessels would not be permitted to enter the safety zone unless authorized by the COTP or a designated representative. The Coast Guard proposes this rulemaking under authority in 33 USC 1231.

III. Discussion of Proposed Rule

The COTP proposes to amend its safety zone regulations for annual events in Coast Guard Sector Upper Mississippi River listed in Table 2 of 33 CFR 165.801. This section requires amendment from time to time to properly reflect the recurring safety zone regulations in Sector Upper Mississippi River. This rule would add one new recurring safety zone, remove four no longer recurring safety zones, and amend the sponsor/name, date, and/or safety zones for three recurring safety zones already listed in the current table. Other than this one new safety zone, four removed safety zones, and 3 changes to the sponsor/name, date, and/or safety zones of certain events, the regulations of 33 CFR 165.801 and the other provisions in Table 2 of § 165.801 would remain unchanged.

The Coast Guard proposes to revise regulations at 33 CFR 165.801 Table 2 by adding one new safety zone. The safety zone being added to Table 2 is below:

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
2 days – 3rd Weekend in July	Kentucky Drag Boat Association/ Evansville, IL Drag Boat Races	Evansville, IL	Kaskaskia River mile marker 9 to 11.

The Coast Guard also proposes to revise regulations at 33 CFR 165.801 Table 2 by removing the following four existing safety zones that are no longer recurring, with reference by line number to the current Table 2 of 33 CFR 165.801. The four existing safety zones being removed are below:

Line	Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
3	1 day – 2nd Weekend of June	City of Champlin/ Father Hennepin Fireworks Display	Champlin, MN	Upper Mississippi River mile marker 870.5 to 872.0.
22	1 day – 3rd Sunday in June	Burlington Steamboat Days/ Burlington Steamboat Days	Burlington, IA	Upper Mississippi River mile marker 403.5 to 404.5.
34	1 day – 4th of July Weekend	McGregor/Marquette Chamber Commerce/ Independence Day Celebration	Marquette, IA	Upper Mississippi River mile marker 635.7 to 634.2.
37	2 days—3rd weekend of September	Riverside Chamber of Commerce/Riverfest	Riverside, MO	Missouri River mile marker 371.8 to 372.2.

The Coast Guard also proposes to revise regulations at 33 CFR 165.801 Table 2 by amending three existing safety zones listed in the current table. The amendments involve changes to marine event sponsor/name and/or safety zones, with reference by line number to the current Table 2 of 33 CFR 165.801. The three safety zones being amended are below:

This proposed rule modifies the following three safety zones from the existing Table 2 in §165.801 as follows:

Line	Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone	Revision
1	1 day – 4th Weekend in July	Marketing Minneapolis LLC/ Aquatennial Fireworks	Minneapolis, MN	Upper Mississippi River mile marker 853.2 to 854.2.	Sponsor/ name
32	1 day—4th of July weekend	Grafton Chamber of Commerce/Grafton Chamber 4th of July Fireworks	Grafton, IL	Upper Mississippi River mile marker 218 to 219.	Safety zone
41	1 day – 4th of July Week	City of East Moline/City of East Moline Fireworks	East Moline, IL	Upper Mississippi River mile marker 489.9 to 490.2.	Date and safety zone

The amendments to this rule are necessary to ensure the safety of vessels and people during annual events taking place on or near navigable waters in Sector Upper Mississippi River. Although this proposed rule would be in effect year-round, the specific safety zones listed in Table 2 of 33 CFR 165.801 would only be enforced during a specified period of time coinciding with the happening of the annual events listed. In accordance with the regulations listed in 33 CFR 165.801(a)-(d), entry into these safety zones is prohibited unless authorized by the COTP or a designated representative. The regulatory text of the updated Table 2 of §165.801 we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process.

This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zones. These safety zones are limited in size and duration, and are usually positioned away from high vessel traffic zones. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described

in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing safety zones limiting access to certain areas under 33 CFR 165 within the COTP Zone. Normally such actions are categorically excluded from further review under

paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public

comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the U.S. Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. In §165.801, revise Table 2 to read as follows:

TABLE 2 OF §165.801—SECTOR UPPER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
1. 1 day—4th Weekend in July	Marketing Minneapolis LLC/ Aquatennial Fireworks	Minneapolis, MN	Upper Mississippi River mile marker 853.2 to 854.2.
2. 1 day—4th of July weekend	Radio Dubuque/Radio Dubuque Fireworks and Air show	Dubuque, IA	Upper Mississippi River mile marker 581.0 to 583.0.
3. 1 day—4th of July weekend	Downtown Main Street/Mississippi Alumination	Red Wing, MN	Upper Mississippi River mile marker 790.8 to 791.2.
4. 1 day—4th of July weekend	Tan-Tar-A Resort/Tan-Tar-A 4th of July Fireworks	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to

			026.2.
5. 1 day—1st weekend of September	Tan-Tar-A Resort/Tan-Tar-A Labor Day Fireworks	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2.
6. 1 day—Last Sunday in May	Tan-Tar-A Resort/Tan-Tar-A Memorial Day fireworks	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2.
7. 1 day—4th of July weekend	Lake City Chamber of Commerce/Lake City 4th of July Fireworks	Lake City, MN	Upper Mississippi River mile marker 772.4 to 772.8.
8. 1 day—4th of July weekend	Greater Muscatine Chamber of Commerce/Muscatine 4th of July	Muscatine, IA	Upper Mississippi River mile marker 455.0 to 456.0.
9. 1 day—Last weekend in June/First weekend in July	Friends of the River Kansas City/KC Riverfest	Kansas City, KS	Missouri River mile marker 364.8 to 365.2.
10. 1 day—4th of July weekend	Louisiana Chamber of Commerce/Louisiana July 4th Fireworks	Louisiana, MO	Upper Mississippi River mile marker 282.0 to 283.0.
11. 1 day—4th of July weekend	Guttenberg Development and Tourism/Stars and Stripes River Day	Guttenberg, IA	Upper Mississippi River mile marker 615.0 to 615.5.
12. 4 days—1st or 2nd week of July	Riverfest, Inc./La Crosse Riverfest	La Crosse, WI	Upper Mississippi River mile marker 697.5 to 698.5 (Wisconsin).
13. 1 day—2nd weekend in July	Prairie du Chien Area Chamber of Commerce/Prairie du Chien Area Chamber Fireworks	Prairie du Chien, WI	Upper Mississippi River mile marker 635.2 to 635.7.
14. 1 day—4th of July weekend	JMP Radio/Red White and Boom Peoria	Peoria, IL	Illinois River mile marker 162.5 to 162.1.
15. 1 day—Last weekend in June/First weekend in July	Hudson Boosters/Hudson Booster Days	Hudson, WI	St. Croix River mile marker 016.8 to 017.2.
16. 2 days—4th of July weekend	City of St. Charles/St. Charles Riverfest	St. Charles, MO	Missouri River mile marker 028.2 to 028.8.
17. 1 day—4th of	Minneapolis Park and Recreation	Minneapolis,	Upper Mississippi

July weekend	Board/Red, White, and Boom Minneapolis	MN	River mile marker 853.5 to 854.5.
18. 1 day—4th of July weekend	Davenport One Chamber/Red White and Boom	Davenport, IA	Upper Mississippi River mile marker 482.0 to 482.7.
19. 2 days—3rd weekend of July	Amelia Earhart Festival Committee/Amelia Earhart Festival	Kansas City, KS	Missouri River mile marker 422.0 to 424.5.
20. 1 day—4th of July weekend	Alton Exposition Commission/Mississippi Fireworks Festival	Alton, IL	Upper Mississippi River mile marker 202.5 to 203.0.
21. 1 day—Last Sunday in May	Lodge of the Four Seasons/Lodge of the Four Seasons Memorial Day Fireworks	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
22. 1 day—First weekend of September	Lodge of the Four Seasons/Labor Day Fireworks	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
23. 1 day—4th of July weekend	Lodge of the Four Seasons/Lodge of the Four Seasons 4th of July	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2.
24. 2 days—3rd weekend in July	Hasting Riverboat Days/Rivertown Days	Hasting, MN	Upper Mississippi River mile marker 813.7 to 815.2.
25. 1 day—Sunday of Father's Day weekend	Winona Steamboat Days/Winona Steamboat Days Fireworks	Winona, MN	Upper Mississippi River mile marker 725.4 to 725.7.
26. 3 days—4th of July weekend	Fair of St. Louis/Fair St. Louis	St. Louis, MO	Upper Mississippi River mile marker 179.2 to 180.0.
27. 1 day—Last weekend in June/First weekend in July	Bellevue Heritage Days/Bellevue Heritage Days	Bellevue, IA	Upper Mississippi River mile marker 556.0 to 556.5.
28. 1 day—4th of July weekend	Main Street Parkway Association/Parkville 4th of July Fireworks	Parkville, MO	Missouri River mile marker 378.0 to 377.5.
29. 1 day—4th of July weekend	Hermann Chamber of Commerce/Hermann 4th of July	Hermann, MO	Missouri River mile marker 097.0 to 098.0 (Missouri).
30. 1 day—4th of	Grafton Chamber of	Grafton, IL	Upper Mississippi

July weekend	Commerce/Grafton Chamber 4th of July Fireworks		River mile marker 218 to 219.
31. 1 day—4th of July weekend	Salute to America Foundation, Inc./Salute to America	Jefferson City, MO	Missouri River mile marker 143.5 to 143.0 (Missouri).
32. 2 days—2nd weekend in August	Tug Committee/Great River Tug	Port Byron, IL	Upper Mississippi River mile marker 497.2 to 497.6 (Illinois).
33. 1 day—4th of July weekend	City of Stillwater/St. Croix Events/Stillwater 4th of July	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
34. 4 days—3rd week of July	St. Croix Events/Lumberjack Days	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
35. 2 days—Weekend that precedes Labor Day Weekend	Lake of the Ozarks Shootout, Inc./Lake of the Ozarks Shootout	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 032.5 to 034.5.
36. 2 days—1st weekend of September	City of Keithsburg/Keithsburg Fireworks Display	Keithsburg, IL	Upper Mississippi River mile marker 427.5 to 427.3.
37. 1 day—4th of July Week	City of East Moline/City of East Moline Fireworks	East Moline, IL	Upper Mississippi River mile marker 489.9 to 490.2.
38. 2nd Weekend in August	Lansing Lion's Club/Lansing Fish Days Fireworks	Lansing, IA	Upper Mississippi River mile marker 662.8-663.9.
39. 3rd Weekend in August	River Action/Floatzilla	Rock Island, Illinois	Upper Mississippi River mile marker 479.0-486.0.
40. 1 day—Weekend before Thanksgiving	Main Street Parkway Association/Parkville Christmas on the River	Parkville, MO	Missouri River mile marker 377.5 to 378.0.
41. 1 day—4th of July weekend	City of Marquette/Marquette Independence Day Celebration	Marquette, IA	Upper Mississippi River mile marker 634.2 to 635.7.
42. 1 day—1st	St. Louis Brewers Guild Festival	St. Louis, MO	Upper Mississippi

Weekend in June	Fireworks		River mile marker 179.2-180
43. 1 day—4th Weekend in May	Lumiere Place/Memorial Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180-180.5
44. 1 day—1st Weekend in July	Lumiere Place/4 th of July Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180-180.5
45. 1 day—1st Weekend in September	Lumiere Place/Labor Day Fireworks	St. Louis, MO	Upper Mississippi River mile marker 180-180.5
46. 2 days—3rd Weekend in July	Kentucky Drag Boat Association/ Evansville, IL Drag Boat Races	Evansville, IL	Kaskaskia River mile marker 9 to 11.

Dated: April 11, 2018

SCOTT A. STOERMER

Captain, U.S. Coast Guard,

Captain of the Port Sector Upper Mississippi River.

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